

If EQB signs the field citation first, then it creates an order with the right to appeal in court.

I am forwarding an analysis by R2 Attorney Karen Taylor on the legal authority for an EQB Field Citation program so we can discuss further today. Also the Attached File is a copy of R2's Field Citation, Please note it is issued as an "Offer to Settle"

The Environmental Public Policy Act, Law 416, gives the EQB the authority to impose penalties in Section 16 Penalties paragraph (C) without expressly limiting this authority to the attorneys.

So the inspectors presumably could issue field citations, but the party could request a hearing on the field citation which would involve the attorneys.

[illegible]

(a) Any person who infringes any provision of this chapter or the rules and regulations adopted thereunder, or who fails to comply with any resolution, order or agreement dictated by the Board, shall be guilty of a misdemeanor, and upon conviction, punished by a fine not lesser than two hundred dollars (\$200) and not greater than five hundred dollars (\$500). In the discretion of the court, an additional fine of five hundred [dollars] (\$500) may be imposed for each day the violation persisted.

(c) **The Environmental Quality Board is hereby empowered to impose administrative fines and sanctions for infractions of this chapter, or of the orders, rules, and regulations issued and approved by the Board under this chapter.**

(d) In the event that the Board should make a finding of contempt in the commission or continuance of acts for which an administrative fine has already been imposed or in the commission or continuance of acts in violation of this chapter and the regulations thereunder, or a finding of contempt in the noncompliance with any order or resolution issued by

(e) Any person who knowingly makes any false representation, certification or statement under this chapter, the regulations approved thereunder, who knowingly makes any false representation in any report required by the Board under this chapter or the regulations thereunder; or who knowingly and so as to produce inaccurate results, alters any tracking facility or method that has been required by the Board, shall be guilty of a misdemeanor, and upon conviction, punished by a fine not lesser than one hundred dollars (\$100) and not greater than five hundred dollars (\$500).

(g) The Environmental Quality Board is hereby empowered to impose administrative fines and sanctions against any person who violates any provision established in the Air Operation Permit Program under Title V of the Clean Air Act, as amended, or any permit condition or any application charges or fees imposed pursuant to such Program. The administrative fine thus imposed shall not exceed twenty-five thousand dollars (\$25,000) for each infraction, being it understood that each day the infraction persists shall be deemed to be a separate violation.

(i) Any person who knowingly violates any provision established in the Air Operation Permit Program under Title V of the Clean Air Act, as amended, or any condition of the permit or any permit application charges or fees imposed by such Program, and any person who knowingly makes any material statement, representation or certification that is in any way false on any notices or reports required by any operation permit under Title V of the Clean Air Act, as amended, or who knowingly renders inoperative any sampling equipment or method required pursuant to the Program, shall be guilty of a felony, and upon conviction, sanctioned by a fine not lesser than one thousand dollars (\$1,000) and not greater than twenty-five thousand dollars (\$25,000) for each violation, being it understood that each day the infraction persists shall be deemed to be a separate violation, with punishment by imprisonment for the fixed term of one (1) year. Should there be aggravating circumstances, the fixed imprisonment term may be increased up to a maximum of eighteen (18) months; should there be mitigating circumstances, the term may be reduced down to a minimum of six (6) months.

(k) The amounts collected on all administrative fines imposed by the Board and the amounts collected on civil and criminal fines imposed by the courts shall be covered into the Special Account Set For the Environmental Quality Board. The amounts collected on civil and criminal fines imposed by the courts under subsections (h), (i) or (j) of this section or which are attributable to violations of permits under Title V of the Clean Air Act, as amended, shall be destined to environmental research projects.

Law 416, Section 12 - Hearings, orders, and judicial proceedings

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(1) Hearings held by the Governing Board shall be presided by one or more examining officials or administrative judges, who shall be designated by the Chair or by the Governing Board, respectively, and who shall be attorneys-at-law, officials or employees of the Environmental Quality Board or members of the Governing Board or legal consultants or experts on the matter under discussion who have been contracted for hearing purposes. Such hearings may also be presided by attorneys, officials or employees of the Environmental Quality Board or by members of the Governing Board or legal consultants or experts on the matter under discussion who have been contracted for hearing purposes, onto whom the Governing Board has delegated the authority to adjudicate and who shall be designated by the latter as administrative judges.

(2) The Board shall set the date, time, and place for holding the hearing and notify the interested parties, which may appear pro se or represented by an attorney.

(3) The Board shall issue either a resolution as pertinent or its decision within a reasonable term after the hearing has been held, not to be greater than sixty (60) days, and notify each of the parties interested with a copy thereof. Notice of the resolution or decision of the Board shall be given by certified mail and enclose a certification from the Secretary of the Board.

(4) Any person adversely affected by a resolution, order or decision of the Governing Board may request the latter to reconsider its determination or request a review by the Court of Appeals of Puerto Rico, pursuant to the provisions of the Puerto Rico Uniform Administrative Procedures Act, §§ 2101 et seq. of Title 3.

(5) Filing a request for administrative reconsideration or for judicial review shall not exempt any person from complying with or obeying any decision or order of the Governing Board, nor shall such action operate under any circumstance as a suspension or postponement of the effectiveness thereof, unless there is a special order of the Governing Board or the Court of Appeals of Puerto Rico.

(6) Judicial reviews shall be conducted based on the administrative record of proceedings before the Governing Board, as such record has been certified by the Secretary of the Board. Determinations of the Governing Board in connection with facts shall be conclusive if sustained by substantial evidence.

(7) The Governing Board shall hold public hearings prior to authorizing and promulgating any rules or regulations that the same may submit under this chapter. Hearings shall be held pursuant to the norms established for such purposes by the Governing Board, in compliance with the provisions of the Puerto Rico Uniform Administrative Procedures Act, §§ 2101 et seq. of Title 3. Regulations, guidelines, and orders to establish internal norms and directives, may be adopted without submission to this norm.

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Note that this message may contain privileged material, including attorney-client or attorney work product. If you inadvertently received this email, please contact Karen Taylor at the address above.

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